



Consultation, IA <consultation@bia.gov>

## 1076-AF18 Attn: Elizabeth Appell Re: Proposed regulatory changes

1 message

Bill Bingham <seventhson080754@aol.com>  
To: consultation@bia.gov

Fri, Aug 16, 2013 at 9:59 PM

Dear Madams/Sirs

I spoke with the Assistant Secretary's office today and was advised that the deadline for comments on the draft discussion. I was advised by this office that the deadline for submitting comments for consideration is before midnight (11:59:59 pm August 16, 2013) pursuant to the notice listed here: 38617 Federal Register/Vol. 78, No. 124/Thursday, June 27, 2013/Proposed Rules

. However I also noticed in your current web page that a new date was established for comments on the Discussion Draft :

"Red Lined Discussion Draft Version - 25 CFR Part 83 Procedures for Establishing that American Indian Group Exists as an Indian Tribe. Please note that the deadline for providing comments on the Discussion Draft is September 25, 2013."

In reliance on both your agent advising me and the BIA/DOI webpage advising me that I have at least until midnight, almost, tonight, and maybe another month or 5 weeks to submit comments I will, out of an abundance of caution, submit my comments forthwith (tonight) and if the window of opportunity arises again (or has already arisen) I will add to my present comments in due course later (i.e by Sept. 25, 2013)

By way of introduction I am Attorney William S. Bingham of Salem, Connecticut, (145 West Road, Salem, CT. 06420, Phone 860-873-3236, and I would be more than gratified to testify or give testimony on any aspect of my comments and/or experience on behalf of the Eastern Pequot Nation of the Lantern Hill Reservation in (or surrounded by) what is now North Stonington, Connecticut, on Long Pond and

adjacent to and including the sacred Lantern Hill.

From 1982 to the present I have been both a formal and informal advisor to the tribe and to its people and have been its strong advocate. From 1983 until nearly 2000 or 2001 I was its chief legal counsel (or, from 1996-2013, the tribe's legal counsel, essentially pro bono, mostly advising individual members and groups of members and assisting in litigation and public relations to prevent the annihilation and genocide of the tribe).

From 1991-1996 I was project director for its federal acknowledgement project under grants from DHHS/ANA as well as chief legal counsel in all litigation and administrative or other matters. From 1996 to 2000 I continued as its legal counsel in litigation on the issue of tribal sovereignty and took their claims of sovereignty to the Connecticut Supreme Court and ultimately to the US Supreme Court where a Petition for Cert with respect to the Question of whether the tribe was a sovereign "Indian" nation and/or whether its tribal members were "Indians" under 25 CFR 1.4 (which I believe is the governing federal regulation with respect to whether the BIA should or must recognize a tribe pursuant to its mandate and so that the BIA is in compliance with the Indian Trade and Intercourse Act and Article 1, Section 8, of the US Constitution)

Here is 25 CFR rule 1.4 :

25 CFR 1.4 - State and local regulation of the use of Indian property.

**CFR**      **Updates**      **Authorities (U.S. Code)**

[prev](#) | [next](#)

#### § 1.4

State and local regulation of the use of Indian property.

(a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

(b) The Secretary of the Interior or his authorized representative may in specific cases or in

specific geographic areas adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property. In determining whether, or to what extent, such laws, ordinances, codes, resolutions, rules or other regulations shall be adopted or made applicable, the Secretary or his authorized representative may consult with the Indian owner or owners and may consider the use of, and restrictions or limitations on the use of, other property in the vicinity, and such other factors as he shall deem appropriate.

[30 FR 7520, June 9, 1965]

The key language of this regulation is in its definition of the meaning of "Indian" lands and tribes, i.e.... or is subject to a restriction against alienation imposed by the United States."

Let me reiterate and underscore this :

"... none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States."

In other words, to simplify: IF THE LANDS ARE "INDIAN LANDS" AND THE OCCUPANTS ARE "INDIANS" AND THE LAND IS SUBJECT TO THE US CONSTITUTION AND THE TRADE AND INTERCOURSE ACT FORBIDDING STATE CONTROL, AND EVEN STATE ATTEMPTS TO CONTROL IT OR "TREAT" (IE NEGOTIATE) WITH THE TRIBES ARE A PROHIBITED AND EVEN A CRIMINAL ACT, THEN 25 CFR 4.1 APPLIES TO MAKE SUCH "INDIANS" AND THEIR LANDS (OR "RESERVATIONS") SUBJECT TO FEDERAL TRUST STATUS AS A MATTER OF LAW. Again, the simple meaning: if there is an "Indian" community and/or individuals occupying a reservation or territory or distinct and more or less separate "Indian" area or land which falls within the protected status of the the socalled Nonintercourse Act (25 USC 177) and Article 1 Section 8 of the US Constitution :

## **§177. Purchases or grants of lands from Indians**

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of \$1,000. The agent of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty.

Frankly, I often wonder whether ANY federal official or legislator has even read these regulations, statutes and Constitutional provisions when decision making.

To refuse to acknowledge a tribe which has existed as a tribe since time immemorial and who were forced onto reservations as early as 1683 (the Eastern pequots) and who have held that reservation by sheer cultural and political and social will against a genocidal colonial government and later against a state government who wanted the "Indians" (and especially the Eastern Pequots) eradicated and buried with history --- and, to add to the Eastern Pequots' burdens a neglectful (and hence genocidal) federal government (which would not only refuse to protect them as required by the constitution and laws of the US, but would seek to genocide them by biased, arbitrary, capricious and corrupt, politically-motivated negative BIA determinations and procedural technicalities and artificial determinations (meant only to help the gambling industry and shut out its potential competition while denying housing and health care to Native elders and children and women and funds for programs and economic development etc-- such action as the Bush administration took and the BIA took amounted to nothing more than artificially (and wrongly) justified and constitutionally and statutorily impermissible policy of annihilation and genocide of a Native people and their existence as "INDIANS" - DESPITE their 10,000 year occupation of their aboriginal lands and their 330 year statutorily recognized right and politically, legislatively designated status as Indians.

I have argued that the position of Senator Blumenthal today and Senator Joe Lieberman yesterday towards the Eastern Pequots (in their roles both as Connecticut Attorneys General and as Senators) was nothing short of an illegal and constitutionally impermissible violation of the nonIntercourse Act and a violation of the UN prohibitions/protocols against genocide, which is defined thusly:

### **OFFICE OF THE UN SPECIAL ADVISER ON THE PREVENTION OF GENOCIDE (OSAPG)**

#### **ANALYSIS FRAMEWORK**

##### **Legal definition of genocide**

Genocide is defined in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide

(1948) as "any of the following acts committed with intent to destroy, in whole or in part,

*anational, ethnical,*

*racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to*

*members of the group; deliberately inflicting on the group conditions of life calculated to bring about its*

*physical destruction in whole or in part; imposing measures intended to prevent births within the group; [and]*

*forcibly transferring children of the group to another group."*

In "Indian" country in Connecticut Blumenthal and Lieberman are described as among the last of the great "Indian" hunters. And many of us wonder for whom are they doing this? For the Gambling industry and the fabulously wealthy but floundering Mohegans and Mashantucket Gaming management? For Steve Wynn or Trump, or the tea party founding/financing Koch brothers (the last investor to abandon the Eastern Pequot tribe when they most needed funds to appeal the BIA's sour and legally wrong decision under Bush (another beneficiary of the gambling/money laundering businesses' largesse globally. For the State of Connecticut's gaming revenue funds which illegally deny the Eastern Pequots even a pittance while their first cousins drown in debt and new money woes a mile away from Lantern Hill.

The system is corrupt, anachronistic, inherently genocidal, and subject to political whims and bribery. The BIA system also is subject to the bigotry of so-called "Historians" and "anthropologists" who are now given so much power under the new regs proposed to even further represent xenophobic and ethnocentric western interpretations of what it means to be "Indian".

I say keep it fairly simple.

In the new draft you have eliminated this very specific provision of CFR 83.7 which states that

(2) Relationships with State governments based on identification of the group as Indian.

The fact that the State of Connecticut statutorily and legislatively identified this tribe and its lands BY STATUTE for 330 years (the first years when it was just a colonial government at war with the "Natives" SHOULD estopp the state from claiming these tribes are not tribes. Their mere existence and their holding on to their reservation is compelling and irrefutable proof that they existed and that they had sociopolitical community and continuity. Otherwise they would've been destroyed by a racist, genocidal and ethnocentric government of English and Europeans

To eliminate the state statutory recognition and delineation is a further act of genocidal idiocy and manipulation. The whole BIA acknowledgement system is rife with corruption, deception, bigotry and bias (especially in the case of the Eastern Pequots) who were subject to fraud and manipulation by corrupt investors and infiltrators who wanted them to fail.

I support restoring the state recognition language back to the reg and making that prima facie evidence of meeting the criteria. But we can meet ANY criteria you put up as the tribe is STILL HERE and still occupying their reservation (continuously from time immemorial)no matter what the feds say.

Thanks for your time and consideration

Atty WS Bingham  
Salem CT  
860-873-3236